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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

In re L.K., a Person Coming Under the
Juvenile Court Law.

SOLANO COUNTY HEALTH AND
SOCIAL SERVICES DEPARTMENT,

Plaintiff and Respondent,

v.

C.K.,

Defendant and Appellant.

A138160

(Solano County
Super. Ct. No. J41747)

In this dependency proceeding, appellant C.K. (Mother) appeals the juvenile court's order denying her reunification services as to her son L.K. under Welfare and Institutions Code¹ section 361.5, subdivision (b)(10). This provision states that a parent may be bypassed for reunification services if a court has previously terminated services because the parent failed to reunify with the minor's sibling or half-sibling, and the parent has not subsequently made a reasonable effort to treat the problems leading to that termination. Mother contends there is insufficient evidence to support the finding that she did not make reasonable efforts after services were terminated for L.K.'s half-siblings. We affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Mother gave birth to L.K. in November 2012.

¹ All further statutory references are to the Welfare and Institutions Code.

On November 7, 2012, the Solano County Health and Social Services Department (Department) filed a dependency petition. The petition alleged that the minor was at substantial risk based on Mother's failure to provide regular care due to her substance abuse and unresolved mental health issues. Mother reportedly had a history of chronic substance abuse as well as a history of untreated mental illness, including multiple suicide attempts. The Department's detention report states that L.K.'s two half-siblings had previously been made dependents of the juvenile court. E.S. was made a dependent in December 2010, and E.M. was made a dependent in April 2011. These dependencies were established due to allegations of neglect, Mother's unresolved mental health issues, and her substance abuse problems.

In both prior dependency cases Mother was provided with reunification services, however, her services and her parental rights were ultimately terminated. Reunification services as to the two half-siblings were terminated in April 2012. Altogether, Mother received 17 months of family maintenance/reunification services in connection with the two proceedings. During this time, she was provided with case management services, supervised visitation, referrals for parenting education, substance abuse assessment, drug testing, and bus passes for transportation. She did not substantively engage in the services offered by the Department, and as a result, lost parental rights to the two children who were subsequently adopted.²

Seven months after her reunification services were terminated, Mother gave birth to L.K. while she was walking by a park in Fairfield. Reportedly, she "noticed a puddle of water and a baby." When interviewed by the Department's social worker the following day, Mother admitted to ingesting methamphetamines 24 hours prior to delivery of the child. She also admitted to using marijuana and methamphetamines

² Parental rights as to both children were terminated in August 2012. Mother reportedly also has two older children, one who has been adopted and another who resides with his father.

during the course of her pregnancy.³ She stated she decided to use these drugs during her pregnancy to treat her mental health diagnosis. She reported she had been diagnosed with social anxiety and bipolar disorder, and she was unable to take her prescribed psychotropic medications due to her pregnancy. She indicated she had been depressed due to the removal of the two other children. She had been placed on involuntary psychiatric holds in the past following an overdose and suicidal ideations. In August 2011, she was hospitalized due to her having had thoughts of suicide with a clear plan as to how she would accomplish committing suicide.

Regarding the two prior dependency proceedings, a jurisdiction/disposition report dated April 20, 2011, pertaining to E.M., reported that Mother had maintained good compliance with the recommended services for E.S. She had attended Project Aurora, gone to additional 12-step meetings as required by the program, participated in dependency drug court, attended regular visits with the child, participated in weekly sessions with a clinician regarding anger management, and participated in her mental health treatment. The Department stated that while Mother demonstrated she had the capacity to maintain periods of sobriety, there was concern that she had also demonstrated she had the capacity to relapse.

In September 2011, she was reportedly ordered to leave her residential treatment program due to her not only being under the influence of methamphetamines, but also bringing the substance onto the grounds. A drug test revealed positive results for amphetamines, marijuana, and methamphetamines. The Department observed that even though she had been compliant with the recommended services for E.S. and E.M., she continued to struggle with her mental health and substance abuse issues.

On May 31, 2012, one month after her reunification services were terminated, Mother was arrested for possession of a controlled substance and possession of drug paraphernalia. A police officer had contacted her in a park. A search of her bag revealed

³ An addendum report was filed showing Mother had tested positive for amphetamine, marijuana, and methamphetamine on the date L.K. was born.

three prescription pills and a glass pipe commonly used to smoke methamphetamine. She reportedly admitted the pills were not hers.

On October 5, 2012, Mother was found laying on the ground. A police officer found methamphetamine in her purse. She was transported to the hospital for a suspected methamphetamine overdose. L.K. was born the following month.

With respect to the instant dependency, Mother admitted to not receiving any prenatal care after discovering she was pregnant with L.K. She did not obtain care because she was afraid the minor would be removed from her custody. A hospital nurse stated that Mother needed to be constantly reminded to feed the baby and change his diapers. During her time at the hospital, she was observed walking up and down a nearby street panhandling for cigarettes.

On November 8, 2012, L.K. was ordered detained.

On December 12, 2012, the Department filed a jurisdiction/disposition report as to L.K. The Department recommended Mother be bypassed for reunification services, pursuant to section 361.5, subdivision (b)(10) and (11). The report notes that Mother had failed reunification services with the two older children and had her parental rights terminated. The circumstances of substance abuse and mental health issues that lead to the earlier dependencies were still present. Mother did not undertake any efforts to treat her problems until after the instant petition was filed. The Department did not believe she had made reasonable efforts to treat her issues. She started using methamphetamines most recently in December 2011, four months prior to the termination of reunification services for the older children. She continued to use drugs and failed to undertake treatment until after L.K. was removed.

More recently, Mother was complying with her service recommendations. From November 15, 2012 to January 3, 2013, Mother stayed at a residential mental health program that provides short-term, crisis residential treatment for adults with acute mental illness. She attended a weekly substance abuse group and went to numerous 12-step meetings over the next few months. She then moved to a transitional living facility and participated in the required activities. She was scheduled to begin outpatient treatment on

February 8, 2013. While the Department acknowledged she was currently participating in substance abuse and mental health services, her chronic history of methamphetamine use and mental health issues were of concern.

At the contested jurisdictional/dispositional hearing held on February 1, 2013, the Department's social worker acknowledged Mother had made similar successful strides in the past. On one occasion, she relapsed when her children were returned to her care, and also attempted suicide. She then engaged in further services but left a substance abuse treatment program after she was informed of the Department's recommendation to terminate services as to the two children. Thereafter, she did not participate in any services until after L.K. was born. The social worker testified that his recommendations regarding reunification services here would have been different if Mother had entered into a residential treatment program while pregnant with L.K.

At the conclusion of the hearing, the juvenile court found L.K. came within section 300, subdivisions (b) and (j). He was continued in his out-of-home placement. The court declined to order reunifications services for Mother, finding the Department had shown by clear and convincing evidence that she had not made reasonable efforts to address the issues that were present in the prior dependency proceedings. This appeal followed.

DISCUSSION

I. Statement of Law and Standards of Review

Family reunification services play a crucial role in dependency proceedings. (*In re Alanna A.* (2005) 135 Cal.App.4th 555, 563.) Unless a specific statutory exception applies, the juvenile court must provide services designed to reunify the family within the statutory time period. (§ 361.5, subd. (a); see *In re Alanna A.*, at pp. 563–564.) To deny family reunification services to a mother or to a statutorily presumed father, the court must find by clear and convincing evidence that the parent is described by one or more of the provisions in section 361.5, subdivision (b). (§ 361.5, subd. (b)(1)–(15).)

Under section 361.5, subdivision (b)(10), reunification services need not be provided to a parent when the court finds by clear and convincing evidence (1) that the

court previously ordered termination of reunification services for the child's sibling (or half-sibling) because the parent failed to reunify; and (2) that the parent has not subsequently made a reasonable effort to treat the problems that led to removal of the child's sibling from that parent. (*K.C. v. Superior Court* (2010) 182 Cal.App.4th 1388, 1393–1394.) We review an order denying reunification services under section 361.5, subdivision (b) for substantial evidence. (*Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 96 (*Cheryl P.*)) We resolve all conflicts in favor of the prevailing party. Issues of fact and credibility are questions for the trier of fact. The reviewing court may not reweigh the evidence when assessing the sufficiency of the evidence. (*In re Jasmine C.* (1999) 70 Cal.App.4th 71, 75.) The party challenging the ruling of the trial court has the burden to show the evidence is insufficient to support the ruling. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

Even if the parent is described by section 361.5, subdivision (b), the juvenile court may order reunification services if it finds by clear and convincing evidence that reunification is in the child's best interest. (§ 361.5, subd. (c).) "To determine whether reunification is in the child's best interest, the court considers the parent's current efforts, fitness, and history; the seriousness of the problem that led to the dependency; the strength of the parent-child and caretaker-child bonds; and the child's need for stability and continuity." (*In re Allison J.* (2010) 190 Cal.App.4th 1106, 1116.) A best interests finding requires a likelihood that reunification services will succeed. The court must have some reasonable basis to conclude that reunification is possible and will be safe for the child. (*Ibid.*) An appellate court will reverse a ruling on this issue only if the juvenile court abuses its discretion. (*Cheryl P.*, *supra*, 139 Cal.App.4th at p. 96, fn. 6; *In re Angelique C.* (2003) 113 Cal.App.4th 509, 523–524.)

II. Sufficiency of Evidence of Mother's Failure to Make Reasonable Efforts to Alleviate Risk Under Section 361.5, Subdivision (b)(10)

Mother claims the juvenile court erred in ordering a bypass of reunification services, asserting there was insufficient evidence that she had failed to make "reasonable efforts" to alleviate the conditions that led to the removal of L.K. She concedes the

minor's two half-brothers were previously removed from her care, and that reunification services were terminated. She also does not contest that the same problems that led to the dependency of the older children (i.e., her untreated mental illness and her substance abuse) also led the court to detain and remove L.K. from her care. Mother emphasizes that the Department failed to prove the second prong of the test—that she has not made reasonable efforts. She asserts that since April 23, 2012, the date of termination of services in the prior dependencies, she has made a reasonable effort to treat her mental health and substance abuse issues. She insists the court erroneously denied services based on its flawed view that she had failed to undertake reasonable efforts *before* L.K.'s birth. In so doing, she claims the court denied her a meaningful chance to reunify.

Mother also complains that the juvenile court disregarded evidence of her progress in evaluating the reasonableness of her efforts, and instead merely looked to the likelihood of success. Progress (or lack thereof) may undeniably be considered: “It is certainly appropriate for the juvenile court to consider the *duration, extent and context* of the parent's efforts, as well as any other factors relating to the *quality and quantity* of those efforts, when evaluating the effort for reasonableness. And while the degree of progress is not the *focus* of the inquiry, a parent's progress, or lack of progress, both in the short and long term, may be considered to the extent it bears on the *reasonableness* of the effort made.” (*R.T. v. Superior Court* (2012) 202 Cal.App.4th 908, 914.)

In support of her assertions, Mother claims she showed in the past that she could parent one child, and contends the prior dependencies arose only after the second child was born. She attributes the resulting terminations to difficulties in maintaining herself and caring for two children at the same time. She also notes that her January 2013 drug screening tests were negative. Further, she emphasizes the social worker testified that she was presently doing everything he had asked of her.

The juvenile court found Mother had made little progress in addressing her issues. The court noted nothing had happened from the time services were terminated in April 2012 until L.K. was born in November 2012. During this time, Mother knew she was pregnant, yet she exposed L.K. to illegal drugs during his gestation, “which was the

most significant period of this child's life." The court also noted she was "clearly on notice" as to the gravity of her situation, as she had already lost reunification with her other children. Although she had made some efforts more recently, the court did not think the efforts were reasonable under the circumstances. Considering the length of time Mother has had mental health and substance abuse problems, and the 17 months of services already provided in the earlier dependencies of L.K.'s half-siblings, we conclude the court's finding is supported by substantial evidence.

Mother claims the juvenile court "reflexively denied" her an opportunity to reunify based on her failure to reunify in the past. While she appears to take issue with the court's focus on her conduct during the months prior to L.K.'s birth, we find the court's analysis to be compelling under the circumstances of this case. We also acknowledge it is true that Mother voluntarily went into residential mental health and substance abuse treatment facilities shortly after L.K. was detained. In addition to submitting evidence of her attendance at 12-step meetings, Mother submitted reports from her residential programs attesting to her progress in recovery, as well as certificates of achievement in recovery. It is clear that she has the capacity, at times, to make positive changes in her life.

The question arises, however, on what time period we are to focus when we consider whether Mother has "subsequently" made reasonable efforts. *Cheryl P.*, *supra*, 139 Cal.App.4th at page 98, construed the term "subsequently" to "refer[] to reasonable efforts made since the removal of the sibling." The statute could also be read as applying to efforts made during the period following the termination of reunification services in the prior dependency. (See *In re Harmony B.* (2005) 125 Cal.App.4th 831, 842–843 (*Harmony B.*)). Either way, the statute clearly must be construed as calling for a consideration of not merely Mother's efforts to alleviate her problems after the initial detentions, but what she did during the period between the prior termination of services and L.K.'s birth. (§ 361.5, subd. (b)(10).)

We find the following observations instructive: "[W]hen some time has elapsed after the termination of reunification services with respect to one child, the court

appropriately must take into account the parent's reasonable efforts to correct the underlying problems in the interim before the court denies reunification services with respect to a second child. When, however, as in the instant case, the two proceedings occur in immediate proximity, the trial court required finding under the 'no-reasonable effort' clause is a formality because the parent's circumstances necessarily will not have changed. In our view, the statute was amended to provide a parent who has worked toward correcting his or her problems an opportunity to have that fact taken into consideration in subsequent proceedings; it was not amended to create further delay so as to allow a parent, who up to that point has failed to address his or her problems, another opportunity to do so." (*Harmony B.*, *supra*, 125 Cal.App.4th 831 at pp. 842–843, fn. omitted.)

Here, the circumstances of L.K.'s birth are telling. Instead of addressing the issues that led to the removal of E.S. and E.M., Mother deliberately chose to avoid prenatal service providers because she was afraid the child would ultimately be taken from her. Thus, she was clearly aware of her problems, yet chose not to confront them while at the same time placing her unborn child at risk. Nor did she engage in any rehabilitative services. During her pregnancy, she continued to use illegal drugs, thereby further endangering her son even before his birth. The evidence indicates that she suffered a serious methamphetamine overdose one month prior to L.K.'s birth. Her contention that she could have reasonably managed to care for a single child rings hollow in light of the fact that she spontaneously delivered L.K. while walking down a sidewalk. Further, she had evidenced a pattern in the past of initial compliance with reunification services, followed by relapses and failures to adhere to mental health treatment plans.

While the time period within which to effect positive change here was short, "[i]n an era of dwindling resources, the state may reasonably focus its reunification efforts on those families most likely to be reconciled." (*In re Gabriel K.* (2012) 203 Cal.App.4th 188, 196.) The foregoing facts constitute substantial evidence that Mother's efforts to alleviate the problem that led to L.K.'s removal had not been "reasonable." In sum, the

juvenile court's decision to bypass reunification services was supported by substantial evidence.

III. *The Juvenile Court Reasonably Determined Mother Did Not Meet Her Burden to Show Reunification Was in L.K.'s Best Interests*

Considering all of the foregoing factors, we find no abuse of discretion in the juvenile court's denial of reunification services under section 361.5, subdivision (c). L.K. was three months old at the time of the contested hearing. At the time of this writing, he is 14 months old. He has spent his entire young life in the dependency system and has never resided with Mother. His need for stability and continuity is profound. There can be no serious argument that Mother's problems are not grave. Setting aside her mental health history, substance abuse is notoriously difficult for a parent to overcome, even when faced with the loss of her children. (See *In re Kimberly F.* (1997) 56 Cal.App.4th 519, 531, fn. 9.) Mother's history demonstrated such a difficulty. She had been involved in substance abuse for many years. She lost custody of two sons due to such abuse. Because of the protracted nature of Mother's problems and her recent history of failed efforts with her other children, the court was justified in concluding that reunification efforts would not likely be successful and that it was appropriate to focus on stability and permanency for L.K.

DISPOSITION

The jurisdictional and dispositional orders are affirmed.

Dondero, J.

We concur:

Margulies, Acting P.J.

Banke, J.